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November 6, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie R. Salas, Esquire
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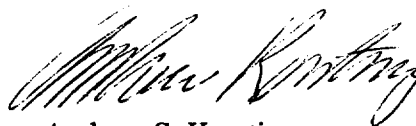
Re: Opposition to Motion for Leave to File Supplement
and Supplement to Opposition to Applications for
Review; MM Docket Nos. 97-26 and 97-91;
Detroit, Howe and Jacksboro, Texas,
and Antlers and Hugo, Oklahoma, et al.

Dear Ms. Salas:

Transmitted herewith on behalf of Metro Broadcasters-Texas, Inc., are an original and four copies of its "Opposition to Motion for Leave to File Supplement and Supplement to Opposition to Applications for Review," filed in the above-referenced proceeding. This pleading is being filed in connection with the Commission's *Report and Order*, DA 98-1650 (released August 21, 1998).

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting
Counsel for Metro Broadcasters-Texas, Inc.

Enclosure

cc (w/ encl.): Certificate of Service (by hand & first-class mail)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-26
Table of Allotments,)	RM-8968
FM Broadcast Stations,)	RM-9089
(Detroit, Howe and Jacksboro, Texas,)	RM-9090
Antlers and Hugo, Oklahoma))	
)	
In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-91
Table of Allotments,)	RM-8854
FM Broadcast Stations,)	RM-9221
(Lewisville, Gainesville, Robinson,)	
Corsicana, Jacksboro, and)	
Mineral Wells, Texas))	

To: The Commission

OPPOSITION TO
MOTION FOR LEAVE TO FILE SUPPLEMENT AND
SUPPLEMENT TO OPPOSITION TO APPLICATIONS FOR REVIEW

Metro Broadcasters-Texas, Inc. ("Metro"), licensee of Station KHYI(FM), Howe, Texas, by counsel and pursuant to Section 1.45 of the Commission's rules, hereby opposes the "Motion for Leave to File Supplement and Supplement to Opposition to Applications for Review," filed October 29, 1998 ("Motion"), by Heftel Broadcasting Corporation ("Heftel"). In support of this opposition, the following is stated:¹

¹ Metro does not oppose Heftel's motion for leave to its supplement its pending "Consolidated Opposition to Applications for Review," filed October 9, 1998. Metro agrees with Heftel's recitation of the facts in *Galesburg, Illinois and Ottumwa, Iowa*, DA 98-2068 (released October 16, 1998), and, like Heftel, believes that the *Report and Order* may be helpful to the full Commission in resolving the issues in this proceeding. See Motion, p. 3. Accordingly, Metro's
(continued...)

In its Motion, Heftel seeks to “bring the Commission’s attention” to the Allocations Branch’s *Report and Order* in MM Docket No. 97-130, *Galesburg, Illinois and Ottumwa, Iowa*, DA 98-2068 (released October 16, 1998) (“*Ottumwa*”), noting that the decision in *Ottumwa* was not released until after Heftel filed its October 9, 1998, opposition pleading. Motion, pp. 1-2. Heftel claims that *Ottumwa* supports its position that its rulemaking proposal should be considered on a comparative basis with the pending application of Jerry Snyder and Associates, Inc. (“Snyder”), to operate on Channel 240C1 at Mineral Wells, Texas (File No. BPH-961126IG) (the “Snyder Application”). *Id.* at 2-3.

Despite Heftel’s arguments, *Ottumwa* does not support Heftel’s position, but, rather, confirms that Heftel’s rulemaking petition is procedurally defective. Indeed, Heftel fails to note the significant distinction between the Snyder Application and the application filed by the licensee of Station KTWB, Ottumwa, Iowa. With respect to *Ottumwa*, the FM Table of Allotments contains an allotment for Channel 224C3 at Ottumwa.² The licensee of Station KTWB did not propose to operate on Channel 224C3, but, instead, filed a “one-step upgrade application” proposing to operate on Channel 224C2 at Ottumwa. *Ottumwa* at ¶3. Before conducting a comparative analysis of the competing proposals in *Ottumwa*, the Commission noted that it first needed to determine whether the Ottumwa licensee’s proposal should be considered as an upgrade from a Class A station to a Class C2 station, or, alternatively, as a Class C3 station upgrading to a Class C2 station. The

¹(...continued)
opposition is directed solely at the argument presented in Heftel’s Motion.

² Although *Ottumwa* amended the FM Table of Allotments by substituting Channel 224C2 for Channel 224C3 at Ottumwa, the *Report and Order* will not become effective until December 1, 1998. *Ottumwa* at ¶9.

Commission concluded that although Station KTWa was currently operating with Class A facilities,³ for comparative purposes its proposal would be regarded as an upgrade from Class C3 to Class C2 because the Commission previously made the public interest determination that Channel 224C3 should be substituted for Channel 224A at Ottumwa. *Ottumwa* at ¶5. The Commission further stated:

That action is final and the Channel 224C3 allotment is set forth in the FM Table of Allotments. The action forfeiting and cancelling the minor change construction permit did not modify the underlying Station KTWa license to a Class A station. . . . The Class C3 facility is protected in our data base and there is no impediment that would prohibit [the Ottumwa licensee] from filing a new minor change application to implement that Class C3 license modification. Moreover, [the Ottumwa licensee] can implement Class C3 facilities regardless of the outcome of this comparative proceeding.

Id. (emphasis added).

As demonstrated above, the Snyder Application is distinguishable from the one-step upgrade application filed by the Ottumwa licensee because, unlike the licensee of KTWa, who sought to upgrade its allotment from Channel 224C3 to Channel 224C2, the Snyder Application merely seeks to implement the existing Channel 240C1 allotment at Mineral Wells. Thus, just as the case with respect to the existing Channel 224C3 allotment at Ottumwa, the Channel 240C1 allotment at Mineral Wells is protected in the Commission's database, and there was no impediment precluding Snyder from filing the Snyder Application to implement the existing Class C1 allocation, which Snyder was free to implement regardless of Hefel's rulemaking proposal. *Ottumwa* at ¶5. Therefore, despite Hefel's argument to the contrary, *Ottumwa* provides no legal basis for the Commission to

³ As Hefel notes (*see* Motion, p. 3, n.5), Station KTWa never implemented the Class C3 upgrade that was adopted in an earlier proceeding. The construction permit for the Class C3 facility expired on August 26, 1992, and was subsequently cancelled on November 18, 1992. *See Ottumwa* at ¶3.

subject the Snyder Application to a comparative analysis with Heftel's rulemaking proposal. Indeed, the case stands for the opposite proposition.

WHEREFORE, in light of the foregoing, Metro Broadcasters-Texas, Inc. respectfully requests that its Application for Review, filed September 24, 1998, be GRANTED, and the opposition pleadings filed October 9, 1998, and October 29, 1998, respectively, by Heftel Broadcasting Corporation, be DENIED.

Respectfully submitted,

METRO BROADCASTERS-TEXAS, INC.

By: 

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Its Counsel

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November 6, 1998

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CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 6th day of November, 1998, copies of the foregoing "Opposition to Motion for Leave to File Supplement and Supplement to Opposition to Applications for Review," were hand delivered or mailed first-class, postage pre-paid, to the following:

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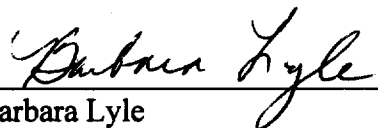
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